

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee solicits comment on the following proposals by July 1, 2017. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of new instructions for use in cases alleging a violation of the Michigan Franchise Investment Law.

**[NEW] M CIV JI CHAPTER 112
FRANCHISE INVESTMENT LAW**

[NEW] M Civ JI 112.01 Franchise Investment Law; Prohibited Practices—Explanation

We have a state law known as the Franchise Investment Law, which provides that a person shall not, in connection with the filing, offer, sale, or purchase of any franchise, directly or indirectly:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

When I use the phrase “scheme or artifice to defraud,” I mean any plan or pattern intended to deceive others in order to obtain something of value.

When I use the phrase “material fact” I mean that the statement cannot be an opinion, belief, speculation, or prediction. It must relate to something past or present that can be proved or disproved. Additionally, it must be of enough importance in the matter that a reasonable person would be likely to rely on it.

When I use the word “rely,” I mean that plaintiff would not have [entered into the contract / [*describe other action*]] if defendant had not [created the false impression / made the [representation / promise]], even if the [false impression / representation / promise] was not the only reason for plaintiff’s action.

Note on Use

Comment

MCL 445.1505. A private right of action is permitted by MCL 445.1531. *United States v Goldblatt*, 813 F2d 619 (CA 3, 1987). The definitions of “material fact” and “rely” are taken from M Civ JI 128.10 and 128.11.

M Civ JI 112.02 Franchise—Definition

When I use the term “franchise,” I mean a contract or agreement, either express or implied, whether oral or written, between two or more persons to which all of the following apply:

- (a) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor.
- (b) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.
- (c) The franchisee is required to pay, directly or indirectly, a franchise fee.

Note on Use

Comment

MCL 445.1502(3)(a)-(c).

M Civ JI 112.03 Franchisee and Franchisor—Definition

When I use the term “franchisee,” I mean a person to whom a franchise is granted. When I use the term “franchisor,” I mean a person who grants a franchise and includes a subfranchisor.

Note on Use

Comment

MCL 445.1502(4)-(5).

M Civ JI 112.04 Offer or Offer to Sell—Definition

The terms “offer” or “offer to sell” include an attempt to offer to dispose of a franchise or interest in a franchise for value. It also includes solicitation of an offer to buy a franchise or interest in a franchise for value. It doesn’t include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

Note on Use

Comment

MCL 445.1503(3).

M Civ JI 112.05 Person—Definition

When I use the term “person,” I mean an individual, corporation, partnership, joint venture, association, joint stock company, trust, or unincorporated organization.

Note on Use

Comment

MCL 445.1503(5).

M Civ JI 112.06 Sale or Sell—Definition

The terms “sale” or “sell” include a contract or agreement of sale of a franchise or interest in a franchise for value. It also means a contract to sell or disposition of a franchise or interest in a franchise for value.

Note on Use

Comment

MCL 445.1503(8).

M Civ JI 112.07 Franchise Fee—Definition

“Franchise fee” means a fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, payments for goods and services.

Note on Use

Comment

MCL 445.1503(1).

M Civ JI 112.08 Payment For Goods and Services as Franchise Fee

If a franchisee is forced to pay a price in excess of a bona fide wholesale price for goods or if the franchisee is required to purchase excess goods for which there is no well-established market in this state, the excess costs borne by the franchisee in favor of the franchisor constitutes the payment of an indirect franchise fee.

Note on Use

Comment

Hamade v Sunoco, Inc, 271 Mich App 145, 157; 721 NW2d 233 (2006).

M Civ JI 112.09 Payments that Do Not Constitute a Franchise Fee

The following are not the payment of a franchise fee:

- (a) The purchase or agreement to purchase goods, equipment, or fixtures directly or on consignment at a bona fide wholesale price.
- (b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card.
- (c) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or service.
- (d) Payments made in connection with the lease or agreement to lease of a franchised business operated by a franchisee on the premises of a franchisor as long as the franchised business is incidental to the business conducted by the franchisor at such premises.

Note on Use

Use only those subsections that are applicable.

Comment

MCL 445.1503(1).

[NEW] M Civ JI 112.10 Franchise Investment Law—Burden of Proof

Plaintiff has the burden of proving each of the following:

- (1) In connection with the filing, offer, sale, or purchase of any franchise, the defendant:
 - (a) employed any device, scheme, or artifice to defraud; or
 - (b) made any untrue statement of a material fact or failed to state a material fact that was necessary to prevent the statements that were made from being misleading under the circumstances; or
 - (c) engaged in any act, practice, or course of business that operated as a fraud or deceit upon any person; and

- (2) The plaintiff justifiably relied on the alleged misrepresentation or omission;
and
- (3) The plaintiff suffered damages.

Your verdict will be for the plaintiff if you decide that all of these have been proved.

Your verdict will be for the defendant if you decide that any one of these has not been proved.